RECENT AMERICAN DECISIONS.

Supreme Court of Michigan.

THE DAILY POST CO. *v.* DONALD McARTHUR.[1]
DAILY FREE PRESS CO. *v.* SAME.

While those damages which depend on the sound discretion of a jury are not susceptible of any accurate regulation by the court, yet the jury should be prevented by proper caution from acting upon improper theories as to the legitimate elements to be considered in estimating them.

The term "exemplary or vindictive damages," should not be used without such explanation as may prevent a jury from being misled by it. For voluntary wrongs additional damages are allowed for injured feeling, but nothing beyond the individual grievance should be taken in account in estimating them.

If different agencies have concurred in producing a private grievance, the liability of each person for such portion of the damages as is allowed for injured feeling should be measured by the extent of his own misconduct.

While the mischief which may be caused by an abuse of the press is such as to render its conductors responsible for great care in guarding against the danger, yet the necessities of civilization require that no unreasonable or vexatious restrictions shall be imposed upon them.

The character and doings of private persons, not developed in legal proceedings or voluntarily made public, cannot properly be discussed in print; and for all libels, every publisher, whether an individual or a corporation, is responsible to the extent of any special damage, and any estimated damage to credit and reputation. But he is only liable for such damages to injured feeling as must inevitably be inferred from the libel itself, published in a paper of such character and circulation as his, if he has used such precautions as he reasonably could, to prevent such an abuse of his columns.

The employment of competent editors, the supervision by proper persons of all that is to be inserted, and the establishment and habitual enforcement of such rules as would probably exclude improper items, should exempt a publisher from any aggravation of damages on account of the express malice of his subordinate, for any libel published without his privity or approval.

But if it should appear that he was wanting in reasonable care to prevent abuses, he would be liable to increased damages for his own misconduct, which might fairly be regarded as identifying him with faults which he took no pains to suppress.

ERROR to *Wayne circuit.*

This was an action for damages for the publication of an alleged libel concerning plaintiff.

The plea was the general issue with notice of justification.

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[1] We are indebted for this case to Hon. J. V. CAMPBELL.—ED. AM. LAW REG.

Ward & Palmer, for plaintiffs.

William P. Wells, *G. V. N. Lathrop*, and *William Gray*, for defendant.

Opinion by

CAMPBELL, J.—These cases come up on the same questions, the action below in each of them being for libel, and the charge in each having been identical in all its legal bearings.

The errors alleged refer to the rule of damages, which, it is claimed, was so laid down as to subject plaintiffs in error to be charged with exemplary damages, and this they insist was not authorized as the case stood before the court and jury. Their corporate character is relied on among other things as modifying and limiting their responsibility. It is not urged that a printing and publishing company engaged in the issuing of a newspaper and established for that purpose is not responsible to all persons injured by the publication of a libel. But it is claimed that those damages which are enhanced by the misconduct of individual agents of the company, stand on a different footing from those which might be recovered against the individual chiefly active in originating the slanderous article; and that, in submitting the case to the jury, sufficient care was not taken to discriminate.

It is not very easy to lay down definite rules for discriminating damages in those cases where they depend upon the sound discretion of a jury. And yet it is necessary to prevent the jury, as far as may be, from acting upon improper theories of what should be regarded, in estimating the elements which go to make up the injury to be redressed. When their attention has been carefully directed, their conclusions must be accepted, unless so perverse or mistaken as to be entirely inconsistent with justice.

The law favors the freedom of the press, so long as it does not interfere with private reputation, or other rights entitled to protection. And, inasmuch as the newspaper press is one of the necessities of civilization, the conditions under which it is required to be conducted should not be unreasonable or vexatious. But the reading public are not entitled to discussions in print upon the character or doings of private persons, except as developed in legal tribunals, or voluntarily subjected to public scrutiny. And, since an injurious statement inserted in a popular journal does more harm to the person slandered than can possibly be wrought

by any other species of publicity, the care required of such journals must be such as to reduce the risk of having such libels creep into their columns, to the lowest degree which reasonable foresight can assure.

The danger and the precautions necessary to prevent it, are directly connected with the business itself; and all who voluntarily assume the responsibility must exercise it under similar conditions. It is the right of the citizen to be secure against all unlawful assaults; and no distinction can be reasonable which allows the care required in the conduct of any avocation, attended by risks to third persons, to be varied by the private or corporate character of its conductors. Any injury which is avoidable by the perpetrator—or, in other words, any injury which is not in some degree accidental—entitles the injured party to redress. And any damage to person or reputation is recoverable, to such extent as in the opinion of a jury, not led away by passion or prejudice, the nature of the injury will warrant.

But in all cases where an act is done which from its very nature must be expected to result in mischief, or where there is negligence so great as to indicate a reckless disregard of the rights or safety of others, a new element of damages is allowed to be considered. A serious wrong which is the natural and direct result of voluntary action, necessarily indicates a voluntary wrongdoer, for the law rigidly holds all persons to the presumption that they intend such results as are to be expected from their conduct, whenever those results arrive. Where the wrong done consists in a libel—which can never be accidental—the publishing is therefore always imputed to a wrong motive, and that motive is called malicious. And, in the absence of any testimony showing the origin and circumstances of the publication, it stands before the jury as a voluntary wrong, until palliated or excused, while the actual motive, whether intensifying or mitigating the moral guilt, may be shown to qualify it.

If evil motives arising out of ill will or revenge are shown, the moral guilt of the perpetrator will be very much enhanced. If such motives are negatived, the evil quality of the act will in like manner be reduced, and it will appear to all persons much less reprehensible.

It is in connection with the various degrees of blameworthiness chargeable on wrongdoers, that discussions have arisen upon the

subject of vindictive or exemplary damages, which, inasmuch as they rest upon actual fault, are by some authorities said to be designed to punish the wrong intent, while, according to others, the damages usually so called are only meant to recompense the sense of injury which is in human experience always aggravated or lessened in proportion to the degree of perversity exhibited by the offenders. While the term exemplary or vindictive damages has become so fixed in the law that it may be difficult to get rid of it, yet it should not be allowed to be used so as to mislead; and we think the only proper application of damages beyond those to person, property, or reputation, is to make reparation for the injury to the feelings of the person injured. This is often the greatest wrong which can be inflicted, and injured pride or affection may, under some circumstances, justify very heavy damages. In all libel cases this injury to the feelings is a proper element to be considered, in addition to the damage to reputation and other attendant grievances. And on the same principle anything having a tendency to reduce the extent of the voluntary wrong is to be considered in mitigation by the jury. The injury to the feelings is only allowed to be considered in those torts which consist of some voluntary act, or very gross neglect, and practically depends very closely on the degree of fault evinced by all the circumstances. It has been very wisely left to the jury to determine each case upon its own surroundings, because the only safe rule of damages in matters of feeling is to give what, to the ordinary apprehension of impartial men, would seem proportionate to an injury which must be measured by the instincts of our common humanity. And it will at once be perceived that where different persons or agencies have concurred in producing an injurious result, although all may be responsible for some damages for injured feeling, as well as for the more substantial mischiefs of another sort, yet they may stand in very different positions of moral wrong.

There is no doubt of the duty of every publisher to see, at all hazard, that no libel appears in his paper. Every publisher is therefore liable, not only for the estimated damages to credit and reputation, and such special damages as may appear, but also for such damages on account of injured feeling as must unavoidably be inferred from such a libel, published in a paper of such a position and circulation. But no further damages than these should

be given, if he has taken such precautions as he reasonably could to prevent such an abuse of his columns. When it appears that the mischief has been done in spite of precautions, he ought to have all the allowance in his favor which such carefulness would justify, in mitigation of that portion of the damages which is awarded on account of injured feelings.

The employment of competent editors, the supervision by proper persons of all that is to be inserted, and the establishment and habitual enforcement of such rules as would probably exclude improper items, would reduce the blameworthiness of a publisher to a minimum, for any libel inserted without his privity or approval, and should confine his liability to such damages as include no redress for wounded feeling beyond what is inevitable from the nature of the libel. And no amount of express malice in his employees should aggravate damages against him, when he has thus purged himself from active blame.

If, on the other hand, it should appear from the frequent recurrence of similar libels, or from other proof tending to show a want of solicitude for the proper conduct of his paper, that the publisher was reckless of consequences, then he would be liable to increased damages, simply because of his own fault he had deserved them. By such recklessness he encourages fault or carelessness in his agents, and becomes in a manner in complicity with their misconduct.

While, therefore, in the present case, the reporters were guilty of carelessness in receiving hearsay talk of legal charges which could only be lawfully published if in accordance with the documentary facts, and while there could be no justification for publishing outside scandal against an individual, from any source whatever, yet the defendants were only responsible, beyond the damages recoverable under any circumstances for such a libel, to the extent of their own conduct, in the care or want of care used in guarding their columns against the insertion of such articles.

We have no means of judging whether the verdict of the jury was based upon any idea of the personal fault of the publishers, and we have no authority to pass upon its propriety in either view of the facts.

But there is room for the ground taken by the plaintiffs in error, that the charge of the court left it in the power of the jury to hold them in all respects identified with the faults of their

agents. Upon this ground we think the charge must be regarded as calculated to mislead the jury, and we must, therefore award a new trial.

Supreme Court of Pennsylvania.

FARMERS AND MECHANICS' NATIONAL BANK *v.* GIRARD INSURANCE AND TRUST CO.

A sale under a writ of partition is a judicial sale, and discharges the lien of judgments and of a mortgage by one of the tenants in common of his undivided portion.

Such mortgage is discharged in Pennsylvania although it be a first mortgage and have priority of all other liens. The Acts of 1830 and 1845 only preserve the lien of such mortgage from discharge by sale under a *writ of execution*.

What irregularities in the proceeding for partition will not vitiate it.

CERTIFICATE from Nisi Prius.

The opinion of the court was delivered by

STRONG, J.—The question raised by this record is, whether the lien of the mortgage of Paul D. Geisse to the Farmers, and Mechanics' Bank, on his undivided third of the lot in dispute, was divested by the sale made by order of the District Court, in the action of partition brought by one of the tenants in common against his co-tenants? The plaintiffs contend that the lien of their mortgage was not disturbed by the sale, for two reasons. The first is, that the proceedings in the action of partition were so defective and irregular that in law they are a nullity as to the one undivided third mortgaged; and the second reason is, that it is not the law that a mortgage given by one of several tenants in common upon his undivided interest is discharged by a sale in proceedings in partition, instituted and duly conducted by one of the other tenants in common. It must be admitted that the proceedings in the action of partition, the effect of which is now under consideration, were in some respects irregular. Whether there was anything worse than mere irregularity — anything requiring us to hold that all the tenants in common were not bound by the action of the court, we will proceed to inquire. The plaintiffs insist that the District Court had not jurisdiction of all the parties, and particularly of the owners of that third